

Appl. No. 10/691,777  
Petition Dated August 3, 2009

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AUG 03 2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/691,777  
Applicant : Howard M. Lee  
Filed : 10/22/2003  
TC/A.U. : 3628  
Examiner : BORISSOV, IGOR N  
Confirmation No. : 7179  
  
Docket No. : 062403.P001  
Customer No. : 50787

Director/Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**COMMUNICATED VIA FAX TO USPTO on 3 August 2009**

**Petition Under 37 CFR 1.10 (e) or other applicable rule**

Sir:

It has just come to my attention that only the first page of Applicant's fifty-six (56) page Response to Office Action dated July 6, 2009 has been posted to the USPTO's on-line Image File Wrapper. Applicant submitted the response to Office Action on July 6, 2009 via the US Postal Service's Express Mail Service Post Office To Addressee. All pages were marked with express mail number EB 583248349 US. Applicant received a return post card indicating that all 56 pages of the Response to Office Action were received by the USPTO. However, as of the date of this Petition only 5 pages of the July 6, 2009 submission are visible within the Image File Wrapper.

Applicant submits herewith the following:

1. a copy of the "Customer Copy" of the Express Mail Post Office To Addressee form bearing Express Mail Number "EB 583248349 US" (1 Page);

Reply to Office Action of  
01-06-2009

Page 1 of 2

Application No. 10/691,777

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**AUG 03 2009**Appl. No. 10/691,777  
Petition Dated August 3, 2009

2. a copy of the return post card stamped July 6, 2009 indicating that 56 pages of Applicant's Response to Office Action was received (1 Page);
3. a copy of the documents downloaded from the Image File Wrapper dated July 6, 2009 (5 pages); and
4. a copy of the originally deposited correspondence (except PTO 2038 to prevent double billing), noting most importantly the Response to Office Action (60 pages total).

Applicant requests that the enclosed Response to Office Action, marked with USPS Express Mail Number EB 583248349 US be entered into the Image File Wrapper for the instant file and be accorded the USPS deposit date of July 6, 2009 in accordance with 37 CFR 1.10(e) or other applicable rule.

Respectfully submitted,  
PELOQUIN, PLLC

August 3, 2009  
Date

Mark S. Peloquin  
Mark S. Peloquin, Esq.  
USPTO Registration # 50,787

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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being transmitted herewith via facsimile transmission to Telephone No. (571) 273-8300 on the date indicated below and is addressed to: Mail Stop AMENDMENT, Commissioner for Patents, Box 1450, Alexandria, Virginia 22313-1450.

Date of Deposit: August 3, 2009

Mark S. Peloquin, Esq.  
(Typed or printed name of person transmitting paper or fee)



Mark S. Peloquin  
(Signature of person transmitting paper or fee)

August 3, 2009  
Date

Reply to Office Action of  
01-06-2009

Page 2 of 2

Application No. 10/691,777

 <b>EB 583248349 US</b>		 <b>EXPRESS MAIL</b> UNITED STATES POSTAL SERVICE®		<b>Customer Copy</b> <small>Label 11-B, March 2004</small>	
				<b>Post Office To Addressee</b>	
<b>ORIGIN (POSTAL SERVICE USE ONLY)</b>					
PO ZIP Code <b>98155</b>		Day of Delivery <input type="checkbox"/> Next <input type="checkbox"/> 2nd <input type="checkbox"/> 2nd Del. Day		Postage <b>\$ 17.50</b>	
Date Accepted <b>7/6/9</b>		Scheduled Date of Delivery <b>7/8</b>		Return Receipt Fee \$	
Mo. Day Year <b>7 6 9</b>		Scheduled Time of Delivery <input type="checkbox"/> Noon <input type="checkbox"/> PM		COD Fee Insurance Fee \$ \$	
Time Accepted <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM		Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day		Total Postage & Fees <b>\$ 17.50</b>	
Rate or Weight <b>33</b>		Int'l Alpha Country Code		Acceptance Stamp <b>POST</b>	
<b>FROM: (PLEASE PRINT) PHONE ( )</b> <b>PELOQUIN, PLLC</b> <b>800 FIFTH AVE, STE 4100</b> <b>SEATTLE, WA 98104</b>					
<b>TO: (PLEASE PRINT) PHONE ( )</b> <b>MAIL STOP AMENDMENT</b> <b>COMMISSIONER FOR PATENTS</b> <b>P.O. BOX 1450</b> <b>ALEXANDRIA, VA</b>					
ZIP + 4 (U.S. ADDRESSES ONLY. DO NOT USE FOR FOREIGN POSTAL CODES) <b>2 2 3 7 3 + 1 4 5 0</b>					
FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.					
FOR PICKUP OR TRACKING Visit <a href="http://www.usps.com">www.usps.com</a> Call 1-800-222-1811					

The following papers were received in the United States Patent and Trademark Office:

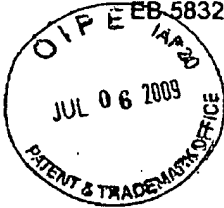
Applicant: Howard M. Lee  
Attorney: Mark S. Peloquin, Esq.  
Title of Invention: **BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY  
MEASUREMENT**  
Serial No.: 10/691,777  
Filing Date: October 22, 2003  
Docket No.: 062403.P001  
Express Mail No.: EB 583248349 US

- \_\_\_\_\_ (1) Utility Patent Application Transmittal SB21 ( 1pg)
- \_\_\_\_\_ (1) Fee transmittal SB17 (1 pg)
- \_\_\_\_\_ (1) Petition For Extension of Time SB22 (1 pg)
- \_\_\_\_\_ (1) Response to Office Action (56 pgs)
- \_\_\_\_\_ (1) PTO 2038 (1 pg)
- \_\_\_\_\_ (1) Return Postcard (1 pg)
- \_\_\_\_\_ (1) Express Mail Certificate of Mailing (1 pg)



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Response dated July 6, 2009  
Reply to Office Action Mail Date 01/06/2009  
EB-583248349 US



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Confirmation No. : 7179

Docket No. : 062403.P001  
Customer No. : 50787

Mail Stop Amendment  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

RESPONSE AND AMENDMENT TO OFFICE ACTION& TELEPHONIC INTERVIEW  
SUMMARY

Sir:

In response to the Office Action mailed on January 06, 2009, please consider the following:

**Amendments to the Specification** begin on page 3 of this paper; no new matter has been entered.

**Amendments to the Claims** are reflected in the listing of claims which begin on page 4 of this paper.

Reply to Office Action Mail Date  
01-06-2009

Page 1

Application No. 10/691,777



The following papers were received in the United States Patent and Trademark Office:

Applicant: Howard M. Lee  
Attorney: Mark S. Peloquin, Esq.  
Title of Invention: **BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY MEASUREMENT**  
Serial No.: 10/691,777  
Filing Date: October 22, 2003  
Docket No.: 062403.P001  
Express Mail No.: EB 583248349 US

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- \_\_\_\_\_ (1) PTO 2038 (1 pg)
- \_\_\_\_\_ (1) Return Postcard (1 pg)
- \_\_\_\_\_ (1) Express Mail Certificate of Mailing (1 pg)

**EXPRESS MAIL CERTIFICATE OF MAILING**

Express Mail Post Office to Addressee No.: EB 583248349 US  
Date of Deposit: July 6, 2009

I hereby certify that I am causing this correspondence, paper, fee, and the documents as indicated on the postcard photocopy above, to be deposited with sufficient postage to the United States Postal Service for Express Mail Post Office to Addressee service on the date of deposit indicated above, and that this correspondence, paper, fee, and the documents as indicated on the postcard photocopy above has been addressed to:

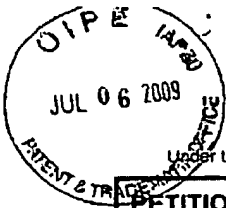
Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Mark S. Peloquin, Esq.

Printed Name of Person Performing Mailing

Mark S. Peloquin  
Signature

July 6, 2009  
Date



07-08-09

172/

PTO/SB/22 (08-09)

Approved for use through 07/31/2009. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)</b>		<b>Docket Number (Optional)</b>	
<b>FY 2009</b> (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)		062403.P001	
Application Number 10/691,777		Filed 10/22/2003	
For <b>BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY MEASUREMENT</b>			
Art Unit 3628		Examiner BORISSOV, IGOR N	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.			
The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):			
	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$130	\$65	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$490	\$245	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1110	\$555	\$ 555.00
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1730	\$865	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2350	\$1175	\$ _____
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.			
<input type="checkbox"/> A check in the amount of the fee is enclosed.			
<input checked="" type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.			
<input type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number _____			
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.			
I am the <input type="checkbox"/> applicant/inventor.			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).			
<input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>50,787</u>			
<input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
<u>Mark S. Peloquin</u>		<u>July 6, 2009</u>	
Signature		Date	
<u>Mark S. Peloquin, Esq.</u>		<u>(206) 447-1336</u>	
Typed or printed name		Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Doc Code: TRAN.LET

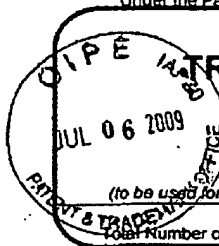
Document Description: Transmittal Letter

PTO/SB/21 (08-09)

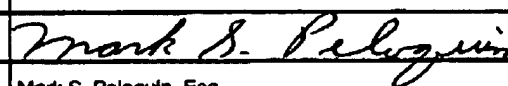
Approved for use through 07/31/2009. OMB 0651-0031

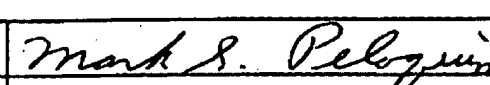
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

	<b>TRANSMITTAL FORM</b>	
	Application Number	10/591,777
	Filing Date	10/22/2003
	First Named Inventor	Howard M. Lee
	Art Unit	3628
	Examiner Name	BORISSOV, IGOR N.
Total Number of Pages in This Submission		62
Attorney Docket Number		062403.P001

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1. Return Post Card 2. Express Mail Certificate of Mailing
<div style="border: 1px solid black; padding: 5px;">Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm Name	PELOQUIN PLLC	
Signature		
Printed name	Mark S. Peloquin, Esq.	
Date	July 6, 2009	Reg. No. 50,787

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:		
Signature		
Typed or printed name	Mark S. Peloquin, Esq.	Date July 6, 2009

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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PTO/SB/17 (10-08)

Approved for use through 06/30/2010. OMB 0851-0032

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.  
Transmitted pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
For FY 2009☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 555.00

**Complete if Known**

Application Number	10/691,777
Filing Date	10/22/2003
First Named Inventor	Howard M. Lee
Examiner Name	BORISSOV, IGOR N
Art Unit	3628
Attorney Docket No.	062403.P001

**METHOD OF PAYMENT (check all that apply)**

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☐ Deposit Account Deposit Account Number: \_\_\_\_\_ Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Fee (\$)	Small Entity Fee (\$)
52	26
220	110
390	195

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
---------------	--------------	----------	---------------

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
--------------	--------------	--	----------	---------------

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Three months (37 CFR 1.17(a)(3))

Fees Paid (\$)

\$555.00

**SUBMITTED BY**

Signature	Mark S. Peloquin	Registration No. (Attorney/Agent)	50,787	Telephone (206) 447-1336
Name (Print/Type)	Mark S. Peloquin, Esq.			Date July 6, 2009

This collection of information is required by 37 CFR 1.138. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Document Description: Transmittal Letter

AUG 03 2009

PTO/SB/21 (06-09)

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Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	PELOQUIN PLLC		
Signature	<i>Mark S. Peloquin</i>		
Printed name	Mark S. Peloquin, Esq.		
Date	July 6, 2009	Reg. No.	50,787

## CERTIFICATE OF TRANSMISSION/MAILING

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Signature	<i>Mark S. Peloquin</i>		
Typed or printed name	Mark S. Peloquin, Esq.	Date	July 6, 2009

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AUG 03 2009

PTO/SB/17 (10-08)

Approved for use through 08/30/2010. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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First Named Inventor	Howard M. Lee
Examiner Name	BORISSOV, IGOR N
Art Unit	3628
Attorney Docket No.	062403.P001

**METHOD OF PAYMENT (check all that apply)**☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☐ Deposit Account Deposit Account Number: \_\_\_\_\_ Deposit Account Name: \_\_\_\_\_

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

**2. EXCESS CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	52	26
Each independent claim over 3 (including Reissues)	220	110
Multiple dependent claims	390	195
<b>Total Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
<b>Indep. Claims</b>	<b>Extra Claims</b>	<b>Fee (\$)</b>
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Three months (37 CFR 1.17(a)(3))

**Fees Paid (\$)**

\$555.00

**SUBMITTED BY**

Signature	<i>Mark S. Peloquin</i>	Registration No. (Attorney/Agent) 50,787	Telephone (206) 447-1336
Name (Print/Type)	Mark S. Peloquin, Esq.		Date July 6, 2009

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/691,777  
Applicant : Howard M. Lee  
Filed : 10/22/2003  
TC/A.U. : 3628  
Examiner : BORISSOV, IGOR N  
Confirmation No. : 7179

Docket No. : 062403.P001  
Customer No. : 50787

Mail Stop Amendment  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

**RESPONSE AND AMENDMENT TO OFFICE ACTION & TELEPHONIC INTERVIEW**  
**SUMMARY**

Sir:

In response to the Office Action mailed on January 06, 2009, please consider the following:

**Amendments to the Specification** begin on page 3 of this paper; no new matter has been entered.

**Amendments to the Claims** are reflected in the listing of claims which begin on page 4 of this paper.

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**Statement of the Substance of Telephonic Interview** begins on page 24 of this paper.

**Remarks/Arguments** begin on page 29 of this communication.

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**Amendments to the Specification:**

Please replace paragraph [0005] with the following amended paragraph:

**[0005]** Assessing the quality of service provided to the customers by the call center agents has grown increasingly more difficult as call centers have increased in size. An agent handles many calls and/or emails a day; however, only a small fraction of the calls and/or emails fielded by an agent are ever monitored by a call center supervisor. Typically, call center agent performance is measured only once a week, at an agent level. This low frequency rate of monitoring does not provide an adequate measure of the agent's performance and the quality of service provided to the customer. U.S. Patent No. 5,535,256 to Maloney et al. provides a tool to the call center supervisor that is aimed at automating the monitoring process within the constraints of a call center supervisor's ability to address the variety of tasks that the supervisor is assigned to do. However, the call center supervisor cannot sample the agent's calls frequently enough and provide the necessary feedback to the agent that is required to increase the quality of service provided to the customers. Neither can the call center supervisor increase the sales rate of the agents or the overall return on investment with respect to the call center.

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### **Amendments to the Claims**

This listing of claims will replace all prior versions, and listings, of the claims in the application:

### **Listing of Claims**

Claim 1. (previously presented) An apparatus comprising:

a storage device in communication with a first geographic area configured to receive and store a plurality of storable representations of interactions between an agent of a business and customers, wherein the business is located in the first geographic area and the storable representations are capable of being analyzed for quality of service in the second geographic area by an analyst, the second geographic area subject to a geographic wage attenuator;

a report generator configured to generate report data, the report data representing a calibrated determination of quality of service rendered by the agent to the customers; and

a business side console selected from the group consisting of a client agent console, a client supervisor console, and a client manager/executive console, wherein the business side console is operable by the business and the business side console provides access to one or both of the following; the report generator, the storage device.

Claim 2. (previously presented) The apparatus of claim 1, further comprising:

a client side console selected from the group consisting of an analyst console, a supervisor console, and a subject matter expert management console, wherein the client



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side console is operable by the business or the agent and the client side console provides access to one or both of the following; the report generator, the storage device.

Claim 3. (previously presented) The apparatus of claim 2, further comprising:

a communication link, wherein the communication link can further comprises a satellite.

Claim 4. (previously presented) The apparatus of claim 1, wherein an analysis frequency applied to the agent's interactions is selected from the group consisting of at least once per day, more than once per day, and a statistically relevant sample size based on the requirements of the business.

Claim 5. (previously presented) The apparatus of claim 1, wherein at least one of the agent's interactions per day is analyzed for quality of service.

Claim 6. (original) The apparatus of claim 1, wherein the report data further comprises:  
an agent performance element that could be performed even better.

Claim 7. (original) The apparatus of claim 6, wherein the report data further comprises:  
an agent performance element that was well performed.

Claim 8. (original) The apparatus of claim 1, wherein the report data further comprises:  
a training tip for the agent based on analyzing the agent's interactions.

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Claim 9. (currently amended) The apparatus of claim 4, further comprising:  
a data base comprising a plurality of the report data ~~collected from the agent~~.

Claim 10. (currently amended) The apparatus of claim 5, further comprising:  
a data base comprising a plurality of the report data ~~collected from the agent~~.

Claim 11. (original) The apparatus of claim 1, wherein an interaction comprises a telephone call.

Claim 12. (original) The apparatus of claim 1, wherein an interaction comprises an email message.

Claim 13. (original) The apparatus of claim 1, wherein the first geographic area is the United States of America and the second geographic area is selected from the group consisting of Botswana, Fiji, India, Kenya, Liberia, Nigeria, South Africa, Swaziland, Tanzania and the Philippines.

Claim 14. (original) The apparatus of claim 1, wherein the first geographic area is the United States of America and the second geographic area is external to the United States of America.

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Claim 15. (original) The apparatus of claim 1, wherein the first geographic area is the United States of America and the second geographic area is selected from the group consisting of Argentina, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Republic of the Congo, Mexico, Nicaragua, Panama and Uruguay.

Claim 16. (original) The apparatus of claim 1, wherein the first geographic area is France and the second geographic area is selected from the group consisting of Algeria, Rwanda, Senegal and Haiti.

Claim 17. (previously presented) The apparatus of claim 1, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service.

Claim 18. (currently amended) A method comprising:

submitting a common replicate of an agent-customer interaction to analysts for scoring;

receiving scores, the scores are produced by the analysts in response to the common replicate; ~~a storable representation of an interaction between an agent of a business and customers wherein the business is located in a first geographic area;~~

providing feedback to the analysts, the feedback includes each analyst's deviation from a standard score; ~~the storable representation to an analyst, in the second geographic area, to determine quality of service provided to a customer by the agent wherein the~~

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~~second geographic area is subject to a wage attenuator and the analyst has been trained to provide a calibrated determination of quality of service; and~~  
~~generating report data associated with the calibrated determination of quality of service.~~

adjusting each analyst's scoring criteria in response to the feedback, if each analyst's deviation from a standard score is not within an acceptable range then repeat the submitting, the receiving, and the providing, if each analyst's deviation from the standard score is within the acceptable range then the analysts are calibrated analysts;

sampling agent-customer interactions between agents of a business and customers, the customer-agent interactions occur in a first geographical area and the sampling is facilitated with a computer system adapted to provide audio and data resulting from the agent-customer interactions; and

analyzing the agent-customer interactions, the analyzing occurs in a second geographical area at a statistically relevant sampling interval by the calibrated analysts to produce a calibrated determination of quality of service rendered by the agents to the customers, a computer system adapted to display audio and data resulting from the agent-customer interactions is used by the calibrated analysts to facilitate the analyzing.

Claim 19. (currently amended) The method of claim 18, further comprising:

sending the scores to the business, the sending is in response to the analyzing;

issuing feedback to the agents, the business issues the feedback;

responding to the feedback, the agents respond to the business in response to the feedback supplied in the issuing feedback;

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providing input to the calibration process, the providing input is responsive to the issuing and the responding; and

recalculating the standard score based on the providing input to obtain a recalculated standard score, if each analyst's deviation from the recalculated standard score is not within an acceptable range then repeat the submitting, the receiving, and the providing feedback, if each analyst's deviation from the recalculated standard score is within the acceptable range, then the analysts are calibrated analysts and the analyzing is resumed.

~~transmitting the storable representation to the second geographic area.~~

Claim 20. (currently amended) The method of claim 18, wherein the ~~analyzing occurs at a frequency that requires at least one of the agent's interactions per day to be analyzed for quality of service~~ acceptable range is established by the business.

Claim 21. (currently amended) The method of claim 18, ~~further comprising:~~

~~informing the agent of at least one agent performance element that could be performed even better~~ wherein the acceptable range is expressed as a deviation between individual analyst's agent-customer scores.

Claim 22. (currently amended) The method of claim ~~18~~21, ~~further comprising:~~

~~notifying the agent of at least one agent performance element that was well performed~~ wherein the deviation, expressed as a percentage, is selected from the group consisting of a user defined percentage, 0 to 5%, 5% to 10%, 10% to 15%, above 15%.

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Claim 23. (currently amended) The method of claim 18, ~~further comprising:~~

~~—providing a training tip for the agent based on the analyzing wherein the common replicate and the acceptable range are provided by an anonymous transaction simulation.~~

Claim 24. (currently amended) The ~~apparatus~~ method of claim 18 ~~wherein, a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service~~ the anonymous transaction simulation is designed to test a parameter selected from the group consisting of a particular category of a transaction, a training update, and a unique customer interaction scenario.

Claims 25-41 (Cancelled).

Claim 42. (currently amended) A method comprising:

~~monitoring an~~ in real-time at high frequency, interactions between an agent of a business and customers wherein the business is located in a first geographic area and a computer system is adapted to permit an analyst located in a second geographic area to perform the monitoring;

~~analyzing in nearly real-time the interactions, in a~~ the second geographic area by ~~an~~ the analyst, to determine ~~the a statistically relevant~~ quality of service provided to a customer by the agent wherein the second geographic area is subject to a wage attenuator

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and the analyst has been trained to provide a calibrated determination of quality of service;  
and

generating report data, the computer system is adapted to facilitate the generating  
when associated with the calibrated determination of quality of service is input.

Claim 43. (previously presented) The method of claim 42, wherein the analyzing occurs at a frequency that requires at least one of the agent's interactions per day to be analyzed for quality of service.

Claim 44. (original) The method of claim 42, wherein the interaction consists of at least one of voice and data associated with the interaction.

Claim 45. (currently amended) The method of claim 42, further comprising:  
informing the agent in nearly real-time subsequent to the analyzing of at least one agent performance element that could be performed even better.

Claim 46. (currently amended) The method of claim 45, further comprising:  
notifying the agent in nearly real-time subsequent to the analyzing of at least one agent performance element that was well performed.

Claim 47. (currently amended) The method of claim 42, further comprising:  
providing a training tip ~~for~~to the agent based on the analyzing in nearly real-time  
subsequent to the analyzing.

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Claim 48. (previously presented) The apparatus of claim 42, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service.

Claims 49-53 (Cancelled).

Claim 49. (currently amended) An apparatus comprising:

a storable representation of a service call arising between an agent of a business and a caller in a first geographic area;

a communication link to transfer the storable representation to a second geographic area; and

a storage device coupled with the communication link, to store the storable representation, wherein the storable representation is capable of being analyzed for quality of service in the second geographic area by an analyst, the second geographic area is subject to a geographic wage attenuator and the analyst has been trained to provide a calibrated high frequency determination of quality of service rendered by the agent during the service call, the calibrated determination of quality of service is stored on a device selected from the group consisting of the storage device and a second storage device.

Claim 50. (previously presented) The apparatus of claim 49, wherein at least one of the agent's calls per day is analyzed for quality of service in the second geographic area.



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Claim 51. (previously presented) The apparatus of claim 50, wherein analyzing for quality of service includes scoring the agent according to predefined criteria.

Claim 52. (currently amended) The apparatus of claim 51, wherein predefined criteria includes scoring the agent according to criteria developed by sampling agent performance at least once a day on a ~~substantially~~ continuing basis.

Claim 53. (previously presented) The apparatus of claim 51, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service.

Claim 54. (currently amended) A method comprising:

receiving a-storable representations of a-service-callinteractions between an agent of a business and customers, wherein the agentbusiness is located in a first geographic area; and an analyst is in a second geographic area, the analyst uses a computer system that is adapted to permit review of the storable representation of the interactions, the analyst uses the computer system to analyze agent's interactions at a frequency equal to at least one interaction per agent per day; and

analyzing the interactions in the second geographical region by the calibrated analyst with the computer system to produce a calibrated determination of service quality rendered by the agent to customers, the calibrated analyst has previously been conditioned to provide the calibrated determination of quality of service by the procedure comprising:

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submitting a common replicate of an agent-customer interaction to analysts for scoring;

receiving scores, the scores are produced by the analysts in response to the common replicate;

providing feedback to the analysts, the feedback includes each analyst's deviation from a desired score; and

adjusting each analyst's scoring criteria in response to the feedback, if each analyst's deviation from a standard score is not within an acceptable range then repeat the submitting, the receiving, and the providing, if each analyst's deviation from the standard score is within the acceptable range, then the analysts are calibrated analysts

~~providing the storable representation to an analyst, in the second geographic area, to determine quality of service provided to a customer by the agent wherein the second geographic area is subject to a wage attenuator and the analyst has been trained to provide a calibrated determination of quality of service;~~

~~utilizing wage attenuation to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area; and~~

~~generating report data associated with the calibrated determination of quality of service.~~

Claim 55. (currently amended) The method of claim 54, wherein the analyzing occurs at a frequency which is selected to provide a statistically relevant determination of the that

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~~requires at least one of the agent's service calls per day to be analyzed for quality of~~  
service rendered by the agent.

Claim 56. (currently amended) The method of claim 55, wherein the storable  
representations~~service call~~ consists of voice and data associated with the  
interaction~~service call~~.

Claim 57. (original) The method of claim 56, further comprising:  
notifying the agent of at least one agent performance element that was well  
performed; and  
informing the agent of at least one agent performance element that could be  
performed even better.

Claim 58. (original) The method of claim 57, further comprising:  
providing a training tip for the agent based on the analyzing.

Claim 59. (previously presented) The method of claim 58, wherein a calibration selected  
from the group consisting of an internal calibration, a client calibration, an anonymous  
transaction simulation, and a quality audit has been applied to the analyst to facilitate the  
calibrated determination of quality of service.

Claims 60-63 (Cancelled).

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Claim 64. (currently amended) A computer readable medium containing executable computer program instructions, which when executed by a data processing system, cause the data processing system to perform a method comprising:

receiving a storable representation of a service call between an agent of a business and customers wherein the business is located in a first geographic area;

playing the storable representation, in a second geographic area, for an analyst to determine ~~the~~ a statistically relevant quality of service provided to a customer by the agent wherein the second geographic area is subject to a wage attenuator and the analyst has been trained to provide a calibrated determination of quality of service; and

generating report data associated with the calibrated statistically relevant determination of quality of service.

Claim 65. (previously presented) The computer readable medium of claim 64, wherein the analyzing occurs at a frequency that requires at least one of the agent's service calls per day to be analyzed for quality of service.

Claim 66. (original) The computer readable medium of claim 65, wherein the service call consists of voice and data.

Claim 67. (currently amended) The computer readable medium as set forth in claim 66, the method further comprising:

notifying the agent of at least one agent performance element that was well performed, the notifying occurs in nearly real-time relative to the playing; and

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informing the agent of at least one agent performance element that could be performed even better, the informing occurs in nearly real-time relative to the playing.

Claim 68. (previously presented) The computer readable medium of claim 67, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service.

Claims 69-73 (Cancelled).

Claim 74. (currently amended) The method of claim 1873, ~~wherein the analyst has been trained with a method~~ the submitting, the receiving, and the providing perform a calibration selected from the group consisting of an internal calibration, a client calibration, and a random quality audit.

Claim 75. (currently amended) The method of claim 20, further comprising:  
using a higher frequency to accelerate the calibration ~~training~~ of the analyst.

Claim 76. (currently amended) The method of claim 75, wherein the higher frequency is a multiple of the statistically relevant sample size and is based on the requirements of a business ~~approximately six times per day.~~

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Claim 77. (currently amended) The method of claim 76, wherein an internal calibration, a client calibration, an autonomous transaction simulation, and a quality audit are applied during an analyst's training period to accelerate the trainingcalibration of the analyst.

Claim 78 (New). A method comprising:

monitoring in real time, interactions between an agent of a business and customers, the agent is in a first geographic area and a calibrated analyst who performs the monitoring is in a second geographic area, a computer system adapted to permit the calibrated analyst to monitor, in real-time, audio and data that arise during the interactions is used to monitor the agent at a frequency equal to at least one interaction per agent per day; and

analyzing in nearly real-time, the interactions in the second geographical region by the calibrated analyst to produce a calibrated determination of service quality rendered by the agent to customers, the analyst has previously been conditioned to provide the calibrated determination of quality of service by a calibration process comprising:

submitting a common replicate of an agent-customer interaction to analysts for scoring;

receiving scores, the scores are produced by the analysts in response to the common replicate;

providing feedback to the analysts, the feedback includes each analyst's deviation from a desired score; and

adjusting each analyst's scoring criteria in response to the feedback, if each analyst's deviation from a standard score is not within an acceptable range then

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repeat the submitting, the receiving, and the providing, if each analyst's deviation from the standard score is within the acceptable range, then the analysts are calibrated and only then can the analysts perform the analyzing.

Claim 79. (New) The method of claim 78, wherein the calibration process reduces deviations between individual analyst's to a value selected from the group consisting of up to three percent (3%), up to five percent (5%), a value specified by the business.

Claim 80 (New). A method for decreasing the training time for an analyst, comprising:  
establishing training criteria for a group of analysts, the training criteria applies to a customer agent interaction for the business;

compiling training criteria from the high frequency evaluations of customer agent interactions utilizing the training criteria from the establishing and the compiling to train the analysts for a period of time; and

receiving storable representations of interactions between an agent of a business and customers, the agent is in a first geographic area and an analyst is in a second geographic area, the analyst uses a computer system that is adapted to permit review of the storable representation of the interactions, the computer system samples the agents' interactions at a frequency equal to at least one interaction per agent per day.

Claim 81 (New). A method comprising:

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providing a first segment of training to a group of analysts, the training is directed to analyzing agent-customer interactions between agents of a business and customers, the first segment comprising:

sampling agent-customer interactions at a rate of at least one interaction per agent per day, a computer system adapted to sample agent-customer interactions and to provide audio and data resulting from the agent-customer interaction is used to facilitate the sampling;

a first client calibration interval, the first client calibration interval occurs at a first frequency;

a first internal calibration interval, the first internal calibration interval occurs at a second frequency;

a first anonymous transaction simulation interval, the first anonymous transaction simulation interval occurs at a third frequency; and

a first quality audit, the first quality audit monitors a first percentage of all transactions processed by the analysts.

Claim 82 (New). The method of claim 81, wherein the first segment is equal to a week, the first frequency is equal to one hour per day, the second frequency is equal to one hour per day, the third frequency is equal to one anonymous transaction simulation per day, and the first percentage is equal to twenty percent.

Claim 83 (New). The method of claim 81, further comprising:



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providing a second segment of training to a group of analysts, the training is directed to analyzing agent-customer interactions between agents of a business and customers, the second segment comprising:

sampling agent-customer interactions at a rate of at least one interaction per agent per day, a computer system adapted to sample agent-customer interactions and to provide audio and data resulting from the agent-customer interaction is used to facilitate the sampling;

a second client calibration interval, the second client calibration interval occurs at a fourth frequency;

a second internal calibration interval, the second internal calibration interval occurs at a fifth frequency;

a second anonymous transaction simulation interval, the second anonymous transaction simulation interval occurs at a sixth frequency; and

a second quality audit, the second quality audit monitors a second percentage of all transactions processed by the analysts during the second segment.

Claim 84 (New). The method of claim 83, wherein the second segment is equal to a week, the fourth frequency is equal to three hours per week, the fifth frequency is equal to three hour per week, the sixth frequency is equal to two anonymous transaction simulation per week, and the second percentage is equal to ten percent.

Claim 85 (New). The method of claim 81, further comprising:

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providing a third segment of training to a group of analysts, the training is directed to analyzing agent-customer interactions between agents of a business and customers, the third segment comprising:

sampling agent-customer interactions at a rate of at least one interaction per agent per day, a computer system adapted to sample agent-customer interactions and to provide audio and data resulting from the agent-customer interaction is used to facilitate the sampling;

a third client calibration interval, the third client calibration interval occurs at a seventh frequency;

a third internal calibration interval, the third internal calibration interval occurs at an eighth frequency;

a third anonymous transaction simulation interval, the third anonymous transaction simulation interval occurs at a ninth frequency; and

a third quality audit, the third quality audit monitors a third percentage of all transactions processed by the analysts during the third segment.

Claim 86 (New). The method of claim 85, wherein the third segment is equal to a week, the seventh frequency is equal to two hours per week, the eighth frequency is equal to two hour per week, the ninth frequency is equal to one anonymous transaction simulation per week, and the third percentage is equal to five percent.

Claim 87 (New). The method of claim 81, further comprising:

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providing a fourth segment of training to a group of analysts, the training is directed to analyzing agent-customer interactions between agents of a business and customers, the fourth segment comprising:

sampling agent-customer interactions at a rate of at least one interaction per agent per day, a computer system adapted to sample agent-customer interactions and to provide audio and data resulting from the agent-customer interaction is used to facilitate the sampling;

a fourth client calibration interval, the fourth client calibration interval occurs at a tenth frequency;

a fourth internal calibration interval, the fourth internal calibration interval occurs at an eleventh frequency;

a fourth anonymous transaction simulation interval, the fourth anonymous transaction simulation interval occurs at a twelfth frequency; and

a fourth quality audit, the fourth quality audit monitors a fourth percentage of all transactions processed by the analysts during the fourth segment.

Claim 88 (New). The method of claim 87, wherein the fourth segment is equal to a week, the tenth frequency is equal to two hours per week, the eleventh frequency is equal to two hour per week, the twelfth frequency is equal to one anonymous transaction simulation per week, and the fourth percentage is equal to five percent.

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**REMARKS/ARGUMENTS****TELEPHONIC INTERVIEW SUMMARY OF June 16, 2009**

**Date of Interview:** 06/16/2009  
**Form of Interview:** Telephonic  
**Attendees:** Mark S. Peloquin (Applicant's Attorney)  
Borissov, Igor N (Examiner)  
**Exhibits:** None

**Claims Discussed:** Claims 1 through 40  
**Prior Art Discussed:** Jotkowitz (2003/0187725 A1)  
**Proposed Amendments:** None

**Other Matters Discussed:** Difference between "calibrate" and "average."

**Outcome of Interview:**

1. Calibration or calibrate is not equivalent to average and the Jotkowitz reference is not teaching calibration.

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calibration - Definition from the Merriam-Webster Online Dictionary

Page 1 of 1

The screenshot shows the Merriam-Webster Online dictionary page for the word "calibration". The page layout includes a navigation bar at the top with links like "Home", "About Us", "Privacy Policy", etc. The main content area features the word "calibration" in a large font, followed by its definition: "the act or process of calibrating; the state of being calibrated". Below the definition, there are several sections: "Learn more about 'calibration'", "Calibration Services" (listing various services and locations), and "Promotional Materials". On the right side, there is a search bar and a section titled "Feed Your Head" with a "3 DAY SALE!" banner. The bottom of the page contains a footer with links to "Products", "Premium Services", "Contact Us", "Advertising Info", and "Privacy Policy".

<http://www.merriam-webster.com/dictionary/calibration>

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### Exhibit 1. Definition of "calibration" from Merriam-webster.com

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calibrating - Definition from the Merriam-Webster Online Dictionary

Page 1 of 2

The screenshot shows the Merriam-Webster Online Dictionary interface. The main content area displays the definition of 'calibrating'. The word is listed as 'calibrating' with one entry found. The definition includes the main entry 'calibrate' and its various uses, such as determining the accuracy of a thermometer or adjusting a measuring instrument. The page also features a search bar, a list of related words, and a section for 'Learn More About Calibrate' with links to various resources. The Merriam-Webster logo is visible in the top left corner, and the Chase logo is in the top right corner.

**Merriam-Webster Online**

**calibrating**

One entry found

**Calibration Services**  
 Fully Accredited, Quick Turnaround Nationwide, Free Online Fast Quote!  
[www.calibration.com](http://www.calibration.com)

**Main Entry: calibrate**  
 Pronunciation: \kə-'lā-brayt  
 Function: transitive verb  
 Inflected Form(s): cal-i-brat-ed, cal-i-brat-ing  
 Date: circa 1864

- 1 : to ascertain the **caliber** of (as a thermometer tube)
- 2 : to determine, rectify, or mark the graduations of (as a thermometer tube)
- 3 : to standardize (as a measuring instrument) by determining the deviation from a standard so as to ascertain the proper correction factors
- 4 : to adjust *precisely* for a particular function
- 5 : to measure precisely : especially : to measure against a standard

— **cal-i-brate** or **-i-brat** *verb*

**Learn More About "Calibrate"** and related topics at [merriam-webster.com](http://www.merriam-webster.com)  
 See a usage of "calibrate" in the Visual Thesaurus.  
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**Formulation Symbols**

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 Merriam-Webster Online. 16 June 2009.  
<http://www.merriam-webster.com/dictionary/calibrate>

**APA Style**  
 calibrate. (2009). In Merriam-Webster Online Dictionary.  
 Retrieved June 16, 2009, from <http://www.merriam-webster.com/dictionary/calibrate>

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 - Synonyms  
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## Exhibit 2. Definition of "calibrating" from Merriam-webster.com

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average - Definition from the Merriam-Webster Online Dictionary

Page 1 of 2

The screenshot shows the Merriam-Webster Online Dictionary page for the word "average". The page includes a navigation bar with links to Home, Visit Our Site, Premium Services, Downloads, Word of the Day, Word Games, Open Dictionary, Spelling Dictionary, Word for the Week, Online Store, Help, and About Us. The main content area displays the word "average" with its pronunciation, etymology, and definitions. The definitions include: 1. a single value (as a mean, mode, or median) that summarizes or represents the general significance of a set of unequal values; 2. an estimation of or approximation to an arithmetic mean; 3. a rate expressing the average performance especially of an athlete team or an athlete computed according to the number of opportunities for successful performance. The page also includes a section for synonyms and a section for related topics.

**average**  
 3 entries found

**average** (noun)  
**average** (adjective)  
**average** (verb)  
 busting average

**Main Entry:** 'av-er-aj 4.  
**Pronunciation:** /ˈv-er-aj/ (n)  
**Function:** noun  
**Etymology:** from earlier *average* proportionally distributed charge for damage at sea, modification of Middle French *avarie* damage to ship or cargo, from Old Italian *avaris*, from Arabic *ʿawariz* damaged merchandise  
**Date:** 1732

**1 a :** a single value (as a mean, mode, or median) that summarizes or represents the general significance of a set of unequal values **b :** **MEAN** **1b :** an estimation of or approximation to an arithmetic mean **b :** a level (as of intelligence) typical of a group, class, or series **c :** above the *average*  
**3 :** a rate expressing the average performance especially of an athletic team or an athlete computed according to the number of opportunities for successful performance  
 — **on average or on the average :** taking the typical example of the group under consideration "prices have increased *on average* by five percent"

**Synonyms:** **AVERAGE, MEAN, MEDIAN, NORM** mean something that represents a middle point. **AVERAGE** is the quotient obtained by dividing the sum total of a set of figures by the number of figures "scored an *average* of 85 on tests". **MEAN** may be the simple average or it may represent value midway between two extremes "a high of 70° and a low of 50° give a *mean* of 60°". **MEDIAN** applies to the value that represents the point at which there are as many instances above as there are below "average of a group of persons earning 3, 4, 5, 8, and 10 dollars an hour is 6 dollars, whereas the *median* is 5 dollars". **NORM** means the average of performance of a significantly large group, class, or grade "scores about the *norm* for fifth grade arithmetic".

**Learn More About "average,"** and related topics at [www.merriam-webster.com/dictionary/average](http://www.merriam-webster.com/dictionary/average)  
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 "average." Merriam-Webster Online Dictionary. 2009.  
 Merriam-Webster Online. 14 June 2009.  
 <http://www.merriam-webster.com/dictionary/average>

**APA Style**  
 average (2009). In Merriam-Webster Online Dictionary.  
 Retrieved June 14, 2009, from <http://www.merriam-webster.com/dictionary/average>

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## Exhibit3. Definition of "average" from Merriam-webster.com

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rank - Definition from the Merriam-Webster Online Dictionary

Page 1 of 1

The screenshot shows the Merriam-Webster Online Dictionary page for the word "rank". The page includes a search bar, a list of 7 entries for "rank", and a detailed definition for the main entry "rank". The definition includes the word's function as a verb, its date (1573), and its transitive and intransitive uses. The page also features a sidebar with navigation links, a search bar, and several advertisements.

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**rank**

7 entries found

- 1 rank (adjective)
- 2 rank (noun)
- 3 rank (noun)
- 4 rank (verb)

**Main Entry: rank**  
 Function: verb  
 Date: 1573

**Transitive verb**

- 1 : to arrange in lines or in a regular formation
- 2 : to determine the relative position of : *RAIL* <a highly ranked prospect>
- 3 : to take precedence of

**Intransitive verb**

- 1 : to form or move in ranks
- 2 : to take or have a position in relation to others <ranked first in her class>

Learn more about "rank" and related topics at [bit.ly/rank](http://bit.ly/rank)

See a new use of "rank" in the Visual Thesaurus

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Pronunciation Symbols

Share this entry:

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**MLA Style**  
 "rank." Merriam-Webster Online Dictionary. 2009.  
 Merriam-Webster Online. 16 June 2009.  
<http://www.merriam-webster.com/dictionary/rank>

**APA Style**  
 rank. (2009). In Merriam-Webster Online Dictionary.  
 Retrieved June 16, 2009, from <http://www.merriam-webster.com/dictionary/rank>

Advertisements include: "FREE" offer, "100% Laptop Connect Card", "100% OFF NOW", "More Luxury Standard" Lincoln advertisement, "Toyota" advertisement, and "AT&T U-verse TV \$50 OFF" advertisement.

[http://www.merriam-webster.com/dictionary/rank\[3\]](http://www.merriam-webster.com/dictionary/rank[3])

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#### Exhibit4.Definition of "rank" from Merriam-webster.com

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**Claim Rejection under 35 U.S.C. §101 & 35 U.S.C. §112 1st Paragraph**

The Office rejected claims 18-24, 42-48, 51-63 and 73-77 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Office Action, Jan. 6, 2009, p2-3, 4-5. Additionally, the Office rejected these claims under §112 1st paragraph as failing to disclosure how to practice the invention. Id.

Claim 73 was cancelled. Applicant has amended independent claims 18, 42, and 54 to overcome these rejections by tying the claims to another statutory class. Applicant also points out that these claims transform underlying subject matter in that a customer-agent interaction is transformed into a calibrated statistically relevant determination of the quality of service rendered by an agent. Applicant submits that the amended claims are tied to a particular machine or apparatus and/or transform a particular article into a different state or thing and that such particulars and/or things are non-trivial and as such satisfy *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008) (Bilski) as of the date of this Response to Office Action. Applicant expressly reserves the right to file amended claims in this application or in continuation applications if Bilski is modified or overturned and that such claims based on Bilski being modified or overturned will be without prosecution estoppel.

Applicant requests removal of the rejections under 35 U.S.C. §101 and 35 U.S.C. §112 1st Paragraph. Claims 18-24, 42-48, 54-63, and 74-77 are in condition for allowance and Applicant requests issuance of a timely notice of allowance.

**Claim Rejection under 35 U.S.C. 35 U.S.C. §112 2nd Paragraph**

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The Office rejected claims 24, 49-53, 60-63 and 72 under 35 U.S.C. §112 2nd Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 24, Applicant has amended claim 24 to provide sufficient antecedent basis for this claim.

Claims 60-63, and 72 have been cancelled.

With respect to claim 76, the Office stated that: "The term 'approximately' makes the claim indefinite." Office Action, Jan. 6, 2009, p 4. Respectfully, Applicant maintains that the word "approximately" does not render claim 76 indefinite. Applicant has provided ample teaching with in the application to illustrate that the use of the word "approximately" in relation to sampling rate; see Applicant's Specification at paragraph [0029] directly below:

[0029] The frequency at which an agent's interactions are analyzed can be controlled by either the business within 106 or by the analysts within 108. Typically, the agent's interactions with customers will be analyzed at **approximately** a rate of one interaction per agent per day, indicated by X or a statistically relevant sample size based on the requirements of a business. In some embodiments, the analysis rate can be greater and will be indicated by a number preceding the X. For example, analyzing 4 interactions per agent per day would be indicated by 4X.

In spite of the above argument, Applicant has amended claim 76, thus eliminating the word "approximately."

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**Response to Rejection of Claims 1-48, 54-59, and 61-77 under 35 U.S.C. § 103(a) –  
Eilbacher in view of Garrido and in further view of Jotkowitz**

The Office has rejected claims 1-48, 54-59, and 61-77 under 35 U.S.C. 103(a) as being unpatentable over Eilbacher et al. (Eilbacher) [sic], (US 6,959,078) 25 October 2005, in view of Garrido (Southeast Asia; Call it a boom: Philippine call centers; Internet printout; 4 pages; 04/22/2003) and further in view of Jotkowitz (2003/0187725 A1).

Applicant respectfully points out that according to the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met

- 1<sup>st</sup> there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;
- 2<sup>nd</sup> there must be a reasonable expectation of success;
- 3<sup>rd</sup> the prior art reference (or references when combined) must teach or suggest all of the claim limitations."

These criteria have not been met by the Office's rejection of Applicant's claims 1-48, 54-59, and 61-77. The Office has failed to carry its burden to present a *prima facie* case of obviousness. Jotkowitz does not teach Applicant's claim limitations for which it was cited. Jotkowitz teaches **averaging** different respondent's answers with respect to questions about a participant. Such **averaging** in Jotkowitz is not the same as **calibrating** in the instant application. Jotkowitz is silent on the subject of calibrating.

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The fact that a difference exists between "calibrating/calibration", and "average or rank" was discussed during the teleconference with the Examiner on June 16, 2009. From the Merriam-Webster online dictionary the definition of "calibrating" is:

- 3: to standardize (as a measuring instrument) by determining the deviation from a standard so as to ascertain the proper correction factors;
- 4: to adjust precisely for a particular function;
- 5: to measure precisely; *especially*: to measure against a standard.

Exhibit 2. Definition of "calibrating" from Merriam-webster.com

In contrast to "calibrating," "average" has a very different meaning as can be seen from definition provided by the Merriam-Webster online dictionary:

1a : a single value (as a mean, mode, or median) that summarizes or represents the general significance of a set of unequal values.

AVERAGE is the quotient obtained by dividing the sum total of a set of figures by the number of figures.

Exhibit 3. Definition of "average" from Merriam-webster.com.

**Applicant Teaches Calibration and Calibrating**

Unlike Jotkowitz Applicant teaches calibrating or calibration of a group of analysts, see for example Applicant's Specification at paragraphs: [0045]-[0049], [0052], [0056], [0058]-[0067], [0080]-[0081].

The Office states on pp 8-10 of the Office Action:

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“Claims 1, 18, 25, 42, 49, 54, 64, and 69. Eilbacker et al. teaches a method, system and computer-readable medium having instruction embedded therein for causing a computer to implement said method for analyzing a call agent performance, said system comprising a storage device, a computer configured for receiving and storing data, and generating reports, a client agent computer/console, said method comprising:

receiving a storable representation of an interaction between an agent of a business and customers wherein the business is located in a first geographic area (C. 5, L. 10-17);

providing the storable representation to an analyst, in the second geographic area, to determine quality of service provided to a customer by the agent (a quality management system 30 is located remotely from the customers and agents) (C. 5, L. 10-17; C. 8, L. 7-37);

generating report data associated with the calibrated determination of quality of service (C. 5, L. 15).

While Eilbacker et al. teaches that said quality management system 30 can be located anywhere in the world, Eilbacker et al. does not teach that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area. **Also, Eilbacher et al. does not teach that the analyst has been trained to provide a calibrated determination of quality of service (emphasis added).**

Garrido discloses a practice of outsourcing various jobs in the countries, having lower wages. Specifically, India and Philippine were discussed as the countries where local citizens are paid much less than workers doing same job in the USA (See first and third pages).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. to include that said second geographic area is subject to a wage attenuator, as disclosed in Garrido, because it

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would advantageously allow to save funds and decrease the turnover rate for call centers, as specifically stated in Garrido.

Jotkowitz teaches a method and system for monitoring professional development, wherein the performance of workers (call agents) is monitored and a report including calibrated (averaged) results is provided (Figs. 3-7), wherein calibrating the results indicates necessary skill and training in doing so.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacher et al. and Garrido to include that said data in said report represents a calibrated determination of quality of service rendered by the agent to the customers, as disclosed in Jotkowitz, because it would advantageously allow to provide managers as well as agents a constant input as to performance, as specifically stated in Jotkowitz [0004].

Office Action, Jan. 6, 2009, pages 8-9.

The passages the Office cited from Eilbacher and Jotkowitz are grouped directly below:

Eilbacher states at Column 5, lines 10-17:

"The present invention is also directed to a method for displaying contact center information, including recording data associated with one or more communications with a contact center, wherein the *recording is based on* one or more *recording rules*; comparing the recorded data against predetermined contact center parameters; displaying messages to contact center personnel, reporting contact center activity as compared against the parameters; and storing said displayed messages."

Eilbacher, Column 5, lines 10-17 (emphasis added).

Eilbacher states at Column 8, lines 7-37:

"Contact center monitors, supervisors, clients, and third party reviewers (hereinafter collectively referred to as "users") alike can access the communication information via the Internet for recreation of the entire communication/transaction. Contact center clients therefore have the ability to directly evaluate communications made by their customers and to distribute these communications within their

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respective organization for further evaluation and review. As a result of the present invention, access to contact center transactional data is no longer limited by the number of monitor workstations 112' connected to the system because, with the present invention, any number of Internet-accessible users with proper authorization and a multimedia playback browser can query the data anytime, from anywhere.

A key feature of the present invention is the ease of remote access to the data by users. The user is no longer restricted to the proprietary equipment and software of a telephone call center to conveniently and economically access the full wealth of information that is recorded and subsequently made available for review and analysis by the present open storage portal operating with the communication contact center. The user has the option of selecting particular transactions to review, such as all calls for a particular client, for a particular product, to a particular agent, during a particular time frame, etc. In this manner, the users have web-based browser access to the full range of contact center data from anywhere in the world and are not constrained by a requirement for proprietary hardware and software in network proximity to the contact center.

Eilbacher, Column 8, lines 11-37.

Jotkowitz states at paragraph [0004]:

In many instances, however, the information tends to become static or unused, or at least not optimally used, because of the difficulty in making it available to sources that would require such information. One obvious such source which would benefit from a continuing and dynamic assessment of performance would be the employee herself, who could receive constant input as to performance, so that adjustments and changes in emphasis can be made in response to feedback. Others include, but are not limited to, managers, directors, vice presidents.

**Jotkowitz Does Not Teach Calibration**

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Jotkowitz has been cited by the Office to "modify Eilbacher et al. and Garrido to include that said data in said report represents a *calibrated determination of quality of service rendered by the agent* to the customers, as disclosed by Jotkowitz *emphasis added*." Office Action, Jan. 6, 2009, p 9-10. Respectfully, Jotkowitz does not suggest, mention, or teach anything related to "calibration." As discussed above and during the teleconference on June 16, 2009, Jotkowitz is concerned with averaging, where multiple respondents provide data on a participant and that data are averaged together, see for example paragraph [0093] from Jotkowitz:

Reverting to FIG. 3 of the drawings, one of the headings with respect to each competency is that of participant's "Average Charts". By clicking on the icon in the "average chart" column, the participant would have access to important information relating to averages, and the participant's standings therein. With reference to FIG. 7, total averages are shown, once more with respect to the credibility competency. The participant's total average is shown by category, including overall (which is the average already provided in the "Overall Average" heading in FIG. 3 of the drawings), but also for overall average by category, such as self, seniors in organization, peers, employees who report to him, and clients. The participant would note that senior employees score him relatively high, representing an increase from prior feedback (4.65, an increase of 0.42), while those that report to him scored the participant's credibility at a much lower level, which is decreasing (a 3.23 score, down 0.96 from the previous round of feedback). This will alert the participant to a definite difference in the perception of his or her credibility between those senior to him, and those that report to him.

Jotkowitz, ¶ [0093].

In the passage from Jotkowitz cited above, note that a participant's results are presented in "Average Charts." Total averages or "Overall Averages" are comprised of



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categories of respondents and each category of respondent has its own average. For example, senior employees scored the participant 4.65, while employees who report to the participant scored the participant at 3.23. Note further that the respondents' responses will necessarily contain respondent variability or error due to the absence of calibration between respondents.

Unlike Jotkowitz, which introduces permanent error into its results, Applicant teaches **calibration** to a given standard of the responses from a plurality of analysts to a common input, i.e., an "internal calibration." Applicant's processes teach how to obtain individual responses from different people that vary within a predetermined tolerance. Additionally, Applicant teaches how to calibrate the responses from a plurality of analysts to different standards, such as an agent's specific team supervisor and/or manager, resulting in a "client calibration." An example of Applicant's teaching on calibration is found, for example in paragraph [0045] from Applicant's Specification as well as in the other numerous paragraphs cited above:

.....With reference to **Figure 3A**, analysts review and evaluate transactions between agents and customers at 300. .... Initially, a calibration loop 302-304-306 provides uniformity in scoring an agent's performance by submitting the same agent's data to the entire team of analysts multiple times and reviewing the scored results between the analysts until the variation between analysts' scores of the same agent's data is within acceptable limits (*internal calibration*) *emphasis added*. The same calibration process follows between the team of analysts and the agent's specific team supervisor and/or manager. The agent, the agent's team supervisor or the agent's manager can be referred to as the client, in such a case, calibrating the analysts to one or more of these entities associated with the particular business can be referred to as a "client calibration." Acceptable calibration limits will be determined by the requirements of

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particular businesses; however, in one embodiment, a deviation of five percent (5%) between individual analyst's agent-scores (*internal calibration*) is one example of an acceptable level of uniformity and a deviation of five percent (5%) during a client calibration is one example of an acceptable level of uniformity *emphasis added*.

Applicant's Specification, ¶ [0045].

In the current Office Action, the Office proffers equivalence between "calibrated" and "averaged" or "ranked," using "averaged" on page 9 and "ranked" within the following statement from page 10 of the Office Action:

Jotkowitz teaches a method and system for monitoring professional development, wherein the performance of workers (call agents) is monitored and a report including calibrated (ranked) results is provided (Figs. 3-7), wherein calibrating the results indicates necessary skill and training in doing so.

Office Action, Jan. 6, 2009, p 10.

**Currently Amended Independent Claims 1, 18, 42, 54, 64 And New Independent Claims 78, 80, And 81 As Well As All Claims Depending Therefrom.**

In light of the discussion above, "ranked" is not equivalent to "calibrated," neither is "averaged" equivalent to "calibrated." No form of the word "calibrate" is not found in Jotkowitz because Jotkowitz does not teach calibration. The combination of Eilbacker in view of Garrido and further in view of Jotkowitz does not provide all of the elements found in Applicant's claims. This combination does not make out the required *prima facie* case of obviousness which is required to be made out by the Office.

Thus, with respect to Applicant's currently amended independent claims 1, 18, 42, 54, 64 and new independent claims 78, 80, and 81 as well as all of the claims that depend therefrom, Jotkowitz does not teach, amongst other things, as Applicant does, how to

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obtain "a calibrated statistically relevant quality of service provided to a customer." Instead Jotkowitz simply averages the differences between different respondents' answers. Applicant respectfully requests the current rejection to be removed and the allowance of all pending claims in light of this discussion.

### **Eilbacher Does Not Teach or Suggest Applicant's Claim Limitations**

The Office asserts that Eilbacher teaches Applicant's claims 4, 20, 28, 43, 55, 63, 65, 75, and 76, i.e., "Said apparatus, wherein an analysis frequency applied to the agent's interactions is selected from the group consisting of at least once per day, more than once per day, and a statistically relevant sample size based on the requirements of the business," Office Action, Jan. 6, 2009, p. 11, citing Eilbacher C. 10, L. 58-62. With respect to claims 5-7, 21-23, 29-31, 44-47, 50, 56-58, 66, 67, 70, and 71 the Office states that "Eilbacher et al. discloses that at least one of the agent's interactions per day is analyzed for quality of service (C. 5, L. 15; C. 10, L. 58-62)." Id. The excerpts from Eilbacher cited by the Office are grouped directly below:

For example, if the data analyzer 400 detects that the number of calls being processed by the contact center 40 has increased significantly, the data analyzer could correspondingly increase the frequency by which the environmental data 450 is recorded each hour.

Eilbacher, Column 10, lines 58-62.

Eilbacher states at Column 5, lines 15:

"predetermined contact center parameters; displaying messages to contact center personnel,"

Eilbacher, Column 5, lines 15.

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Applicant's claim limitations, asserted by the Office to be taught by Eilbacher at C. 10, lines 58-62, and at C. 5, line 15, (see excerpts above) are not found in Eilbacher. In the excerpt from Eilbacher cited by the Office (Eilbacher C. 10, lines 58-62), Eilbacher teaches that the "the data analyzer could correspondingly increase the frequency by which the *environmental data 450* is recorded each hour. (emphasis added)" Eilbacher's environmental data 450 is described at C. 8, lines 57-66, as:

"This data includes queue state information, such as the number of calls waiting to be answered in each of the various incoming queues, the number of customers on hold, and the average wait time per queue before a customer can contact an agent. The data also includes the temperature and humidity at the agents' workstations 104, the noise levels within the contact center 40, the number of idle agents, and the profiles of the agents present in the contact center 40."

Eilbacher, Column 8, lines 57-66.

Review of the Office's cited excerpts from Eilbacher illustrates that Eilbacher does not contemplate nor teach analyzing a statistically relevant sample size with respect to an agent's calls. There is no teaching in Eilbacher that would direct one of skill in the art to perform Applicant's claim limitations. Neither does Eilbacher teach or suggest, among other things, Applicant's high frequency statistically relevant recording and analysis interval, calibrated analysis of the customer/agent interaction, accelerated training of agents, etc.

There is not even a hint within Eilbacher to even suggest a need for Applicant's high frequency statistically relevant recording and analysis interval. See for example Applicant's paragraph [0029]:

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....Typically, the agent's interactions with customers will be analyzed at approximately a rate of one interaction per agent per day, indicated by X or a statistically relevant sample size based on the requirements of a business. In some embodiments, the analysis rate can be greater and will be indicated by a number preceding the X. For example, analyzing 4 interactions per agent per day would be indicated by 4X.

Applicant's Specification, ¶ [0029].

The Office is using impermissible hindsight reasoning to allegedly "find" Applicant's claim limitations within Eilbacher. Applicant submits that Eilbacher does not teach Applicant's claim limitations. Neither does Eilbacher in view of Garrido in further view of Jotkowicz teach Applicant's claim limitations. Claims 29-31, 50, 63, and 70-71 have been cancelled. Applicant requests the removal the 35 U.S.C. 103(a) rejection from claims 4-7, 20-23, 28, 43-47, 55-58, 65-67, 75, 76, and the timely issuance of a notice of allowance.

With respect to claims 9, 10, 33, 34, the excerpts from Eilbacher cited by the Office, i.e., C. 5, L. 10-17 (shown above), do not teach Applicant's claim limitation "a data base comprising a plurality of report data," because Applicant's "report data" contains the limitation from claim 1, i.e., "the report data representing a calibrated determination of quality of service rendered by the agent to the customers..." The Office has stated on page 8 and 9 of the Office Action that "Eilbacher et al. does not teach that the analyst has been trained to provide a calibrated determination of quality of service," therefore, it is impossible for Eilbacher to contain Applicant's claim limitation, since Applicant's report data (claim 9, 10) contains a limitation that is not taught in Eilbacher. Claims 33-34 have been cancelled.

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Applicant requests the removal the 35 U.S.C. 103(a) rejection from claims 9-10, and the timely issuance of a notice of allowance.

**Eilbacher Does Not Teach "Analyzing" The Customer Agent Interaction to Provide A Calibrated Determination of The Quality of Service Provided To The Customer As Applicant Does.**

Eilbacher does not teach *analysis* of the agent-customer interaction in order to obtain a calibrated determination of the quality of service rendered by the agent to the customer. Thus, the Office's use of excerpts from Eilbacher, proffered as teaching Applicant's claim limitations of *analysis* of the customer agent interaction are not correct and are in conflict with the Office's admission that "**Eilbacher et al. does not teach that the analyst has been trained to provide a calibrated determination of quality of service (emphasis added).**" Office Action, Jan. 6, p8-9.

Eilbacher states that an object of the Eilbacher invention is "to automate the process by which the electronic data associated with the operation of a contact center is selectively recorded and analyzed." Eilbacher, Column 4, Lines 27-29. Eilbacher characterizes its invention as follows: "[t]he dynamic recording system of the present invention provides a broadly available doorway to a full range of electronic data recorded during the operation of a contact center **40**, such as a telephone contact center. As used herein, the term, 'contact center' refers to a telephone call center that provides information and *analysis* of the operation and utilization of the center facilities." Eilbacher, Column 7, Lines 24-30. Eilbacher teaches that the primary functions of its analyzer 400 are limited to: [t]he data analyzer 400 has two primary functions; a reporting process and recording rules management." Eilbacher, Column 9, Lines 27-29. Eilbacher goes on to teach that "the

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data analyzer 400 gleans agent performance information from the data and compares the performance of each agent against a predetermined set of standards or goals for agents as maintained in the contact center's standards database 460." Eilbacher, Column 9, Lines 30-33. Eilbacher teaches that "performance information" consists of:

1. transactions completed by the agent's shift or month-to-date;
2. the elapsed number of minutes/hours online with the current customer, and
3. the number of calls waiting in queue for that agent or that agent's group.

Eilbacher, Column 9, Lines 55-63.

It is clear from the above list of "performance information" items, that Eilbacher is not teaching **analysis** of the agent-customer interaction in order to obtain a calibrated determination of the quality of service rendered by the agent to the customer.

Eilbacher's teaches that "[t]he data analyzer 400 analyzes the environmental data 450 as isolated data, as compared to historical environmental data retained by the system in the history database 462, and as compared to contact center standards as maintained in the standards database 460. The results from the analysis can be output by the report generator 464 in the form of reports.....the reports can list the temperature and humidity at various agents' workstations 104 across time." Eilbacher, Column 10, Lines 2-11.

It is important to note that while Eilbacher uses the words "analysis" and "report," these words are used differently by Eilbacher and Applicant. Eilbacher does not teach as Applicant teaches that:

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[0036] "...the analysts review and evaluate agent/customer interactions to ensure that the agents have met quality of service criteria established for a particular business." In one embodiment, the evaluation process includes the areas of core skills, soft skills, selling skills, and specific know how. The analysts check core skills by analyzing the agent's method and competence in; answering the phone and greeting the customer; getting the order in the system; answering basic questions; and comprehension of a request made via email. Some reporting metrics used for report generation include the average call handle time and spelling and grammar used accurately during the interaction with the customer. Soft skills are checked by analyzing whether the agent's greetings are scripted; determining how "canned" the email responses are; determining whether the agent can handle an irate customer under pressure; and analyzing the agent's knowledge of when to engage the agent's supervisor to resolve the call. Some reporting metrics used for report generation for soft skills include whether the customer's issue was resolved with the first call, this includes metrics related to specific know how (i.e., technical support/knowledge), and how many repeat emails were required to resolve the customer's issue. Analyzing selling skills involves ranking the agent's ability to; recommend additional products (cross-sell); sell more of the product under discussion by successfully understanding the tone and intonation of the customer during the interaction; and comprehension of the products and services. Some reporting metrics used in report generation for selling skills include measurements of the agent's up-sell and cross-sell performance. In some embodiments, reporting can include scoring compliance with regulations such as the Telephone Consumer Protection Act (TCPA) or other regulations.

[0037] For example, if the customer interaction consisted of an inbound sales call where a customer called to place an order for a product, such as a camera, some of the criteria the analyst will be looking for are whether the agent has opened the call properly, acted courteously, attempted to up-sell



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(i.e., sell a higher end camera), cross-sell and add-on-sell (i.e., selling film and a camera accessory bag with the original camera order) the customer, and checking to determine if the agent was knowledgeable enough to meet the demands of the sale in order to accomplish the up-sell or cross-sell (e.g., could the agent explain the features and benefits and answer technical questions related to the product). Other criteria are employed as are appropriate for a particular industry. For example, in one embodiment, analysts will grade the interactions according to established quality monitoring criteria for a particular industry sector or a particular business. In one embodiment, an agent's performance is sampled at least once a day by the analysts generating report data and agent feedback. Report data is stored in data base 114 for later use and a portion thereof is tailored for the business and the business's agents at 108. Feedback is provided to the business and the agents at 260.

Applicants Specification, ¶ [0036-0037].

Applicant's Specification states that "**Figure 2B and Figure 2C** "display an embodiment of a score sheet that can be used by an analyst to evaluate and score a transaction between an agent and a customer." Applicants Specification, ¶ [0039].

Applicant's **Figure 2B and Figure 2C** are presented below. Eilbacher's analyzer 400 is incapable of determining quality of service as Applicant does in Applicant's claims 1 through 88. Eilbacher's reports do not contain Applicant's "calibrated measurement of quality of service rendered by the agent to the customers" Applicant's Claim 1, because as admitted by the Office; "**Eilbacher et al. does not teach that the analyst has been trained to provide a calibrated determination of quality of service (emphasis added).**"

Office Action, Jan. 6, p8-9.

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FIG. 2B: BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY  
 MEASUREMENT  
 Inventor: David M. Lee 206-447 6  
 Docket No.: 062403.P001  
 Express Mail No.: ER 318145750 US  
 Filing Date: October 22, 2003  
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FIG. 2B

260a

**262 SCORING PARAMETERS**

Moving forward all the UK RMA's will be shipped from the fulfillment center in France.....Moving forward all the .....

**Customer Service Competencies**

**Call Opening** 264

- Used Proper Greeting. Score: 266
- Asked for Transaction ID. Score: 268
- Verified the Customer's Information. Score: \_\_\_\_\_

Comments: \_\_\_\_\_ 270

**Customer Service Skills (Accent and Voice)** 272

- Used good grammar, avoids slang or jargon. Score: \_\_\_\_\_
- Rate of Speech mirrored that of customer. Score: \_\_\_\_\_
- Hold courtesies were followed. Score: \_\_\_\_\_
- Sounded confident, friendly, and polite. Score: \_\_\_\_\_
- Set customer's expectations, used empathy if necessary escalated to a supervisor if necessary Score: \_\_\_\_\_

Comments: \_\_\_\_\_

**Call Closing** 280

- Offered additional products. Score: \_\_\_\_\_
- Used proper closing script. Score: \_\_\_\_\_

Comments: \_\_\_\_\_

**Knowledge, Accuracy and Resolution** 282

- Demonstrate knowledge of the product process. Score: \_\_\_\_\_
- Credit card authorization process followed. Score: \_\_\_\_\_
- Offered alternate products; add on sales. Score: \_\_\_\_\_
- Accurate and concise information was given to the customer. Score: \_\_\_\_\_

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 MEASUREMENT  
 Inver: Howard M. Lee 206 1336  
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FIG. 2C

**Call Management** 284

- Controlled call pace efficiently and length of call was appropriate to request. Score: \_\_\_\_\_
- Controlled call tone and length. Score: \_\_\_\_\_

Comments: \_\_\_\_\_

**Sales** 260b

- Identified sales opportunities. Score: \_\_\_\_\_
- Suggested alternate compatible products in exchange for return. Score: \_\_\_\_\_

Comments: \_\_\_\_\_

**Comments Summary:** 286

**Even better tips:** 288

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Applicant's Specification Figure 2B and Figure 2C.

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Thus, the Office's use of excerpts from Eilbacher as teaching Applicant's claim limitations of **analysis** of the customer agent interaction are not correct.

With respect to the rejection of claims 13-15, 16, and 37-39, the Office has interpreted Applicant's claim limitation as failing to "recite structural elements but recite an intended use of the system" citing to MPEP 2106 (II) (C). Applicant respectfully disagrees and states for the record that these claims clearly specify a known geographic area for the first geographic area and a known geographic area for the second geographic area and in so doing provide a limitation thereby. Claims 37-39 have been cancelled. Applicant's use of the word "wherein," in claims 13-16, does not remove limitation imparting effect from the words that follow the "wherein" in these claims. Applicant requests that the 103(a) rejection be removed from claims 13-16 and that a timely notice of allowance be issued by the Office.

Claims 17, 24, 41, 48, 53, 59, 61, 68, 77. As discussed above, Jotkowitz does not teach calibration, therefore Jotkowitz does not teach Applicant's claim limitations as the Office has asserted. The Office asserts that Applicant's claim language, as shown in Applicant's claim 17 represents an intended use of the system, and, therefore, not given patentable weight." Office Action, Jan. 6, 2009, p. 12. Applicant's currently pending claim 17 reads:

Claim 17. (previously presented) The apparatus of claim 1, wherein a calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation, and a quality audit has been applied to the analyst to facilitate the calibrated determination of quality of service.

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Respectfully, Applicant disagrees with the Office's assertion that Applicant's claim language presents an intended use of the system. To the contrary, through claim 17, Applicant has used a Markush Group to specified the type of calibration that "has been" applied to the analysts to facilitate the calibrated determination of quality of service. Applicant's use of "has been" is past tense, which means that it has been done, not that it "might" be done in the future. In order to obtain a calibrated determination of quality of service, the analysts must be calibrated, hence Applicant's claim language is a claim limitation not an intended use. The foregoing argument applies to claims 48, 59, 68, and 77. Claims 41, 53, and 61 have been cancelled. Claim 24 has been amended, and the Office's prior comments no longer apply. Applicant requests that the 103(a) rejection be removed from claims 17, 48, 59, 68, 77 and that a timely notice of allowance be issued by the Office.

**Use By The Office of MPEP 2106 (II) (C) Is Contrary to Court Precedent From Both The CCPA And The CAFC, Which Have Held That Claim Limitations Can Be Characterized With Functional Language**

With respect to the rejection of claim 62 by the Office, the Office has stated that

"Information as to 'wherein the calibration reduces deviations between individual analyst's to a value selected from the group consisting of *approximately* three percent (3%), *approximately* five percent (5%), a value specified by the business' does not recite structural elements but recited an intended use of the system. Therefore, the limitations, recited in the claims, are not given patentable weight. MPEP 2106 (II) (C) states: 'Language that suggests or makes optional but does not require steps to be performed or *does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*'"

Office Action, Jan. 6, 2009, p 12.

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Applicant has cancelled claim 62, however similar language is found in new claim 79, therefore the following discussion of case law support for functional language is provided in support thereto. Respectfully, Applicant disagrees with the Office's statement that Applicant's claim language does not recite a claim limitation. Rather, Applicant's claim language is a permissible use of **functional language** to define a claim limitation. In making out the current rejection, the Office has improperly extended the guidance of MPEP 2106 II (C) to extinguish the use of functional language in a claim. As such, the rejection of claim 62 is in violation of the long standing and accepted practice of using functional language to define claim limitations. Use of functional language in claim drafting, even at the precise point of novelty, has long been upheld by the CCPA (predecessor court to the CAFC) and now the CAFC, and is reflected in the guidance of the MPEP as a proper technique for claiming.

For example, in In re Swinehart, the CCPA affirmed the use of functional language when it held:

"We take the characterization "functional", as used by the Patent Office and argued by the parties, to indicate nothing more than the fact that an attempt is being made to define something (in this case, a composition) by what it does rather than by what it is (as evidenced by specific structure or material, for example). In our view, there is nothing intrinsically wrong with the use of such a technique in drafting patent claims. Indeed we have even recognized in the past the practical necessity for the use of functional language."

In re Swinehart, 439 F.2d 210, 169 USPQ 226, 228-29 (C.C.P.A. 1971).

The CCPA has instructed that even though a portion of a claim is functional that is no reason to afford that portion of the claim with no weight. In In re Land, the CCPA held:

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"It is true that the italicized portions [of claim 70] are "functional" but we do not regard that as good ground to give them "no Weight" in view of the third paragraph [currently sixth paragraph] of 35 U.S.C. 112. We give them weight and with this limitation we think claims 70 and 71 are limited to deferred diffusion built into the structure recited, thereby being limited to the actual invention disclosed and hence allowable for the same reasons given by the board..."

In re Land, 386 F.2d 866, 151 USPQ 621 (C.C.P.A. 1966).

In In re Echerd, the Court held that "there is nothing inherently wrong in defining something by what it does rather than what it is." The limitations at issue were:

"having sufficient flexibility and wet strength to permit...."

and

"having sufficient adhesive characteristics to firmly bond..."

In re Echerd, 176 U.S.P.Q. (BNA) 321 (C.C.P.A. 1973).

Upholding its predecessor court's long standing precedent, the CAFC has continued to uphold the use of functional language in claims as a valid practice. In In re Weiss, the invention was related to athletic shoes with break-away cleats, which would break-away at a preselected level of force in order to reduce the risk of injury to a wearer. The Examiner's position was that it would be improper to read the functional limitations relating to the pre-selected level of force. On appeal the CAFC reversed the rejection and held:

"Here, applicant has chosen the phrase "preselected level of force" as a specific limitation in the break-away means plus function element to indicate a

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specific level of force, determined in advance, at which the cleat will break-away. This is further described in the specification to mean that level of force at which the cleat must break off in order to prevent injury to the wearer without breaking off during athletics involving noninjurious force levels.

The board incorrectly interpreted this break-away means limitation, giving no effect to the term "preselected level of force" to require only that the cleat break away from the sole at some unknown large level of force not determined in advance."

In re Weiss, 26 USPQ 2 1885 (Fed. Cir. 1993) (unpublished).

On the foregoing reasoning, the CAFC held the claimed invention patentable and affirmed the claim language "preselected level of force."

In the instant application, Applicant's new claim 79 reads:

Claim 79. (New) The method of claim 78, wherein the calibration process reduces deviations between individual analyst's scores to a value selected from the group consisting of up to three percent (3%), up to five percent (5%), a value specified by the business.

Applicant's New Claim 79.

In Applicant's new claim 79, a Markush Group is used to select deviations between individual analyst's scores, where the deviations are expressed with functional language. Consistent with court precedent, Applicant's use of functional language in claim 79 is proper and should be afforded weight by the Office when examining the claim.

**In No Case Should Claim Language Be Ignored By The Office When Determining Patentability.**

Claim language must be considered in its entirety when determining patentability.

The Office must not dissect the claim language when determining patentability. No



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limitation or wording anywhere in the claim can be ignored in determining patentability. In re Stencel, 828 F.2d 751 (Fed. Cir. 1987). Such rejections are improper and inconsistent with the statute. Id. Thus, the rejections of claims 13-15, 16, 37-40, 49, 50-53, 60, and 62 are not properly made. The Office should consider all the words of the claim during the patentability determination; no dissection is permitted by statute, reliance on MPEP 2106 II (C) in manner of the present Office Action is contrary to case law. Applicant notes that the MPEP is a set of guidelines and is controlled by case law, the MPEP is not superior to case law.

**Claim Rejection under 35 U.S.C. § 102(e) as being anticipated by Eilbacher et al. (US 6,959,078).**

The Office has rejected claims 49-53 and 60 as being anticipated by Eilbacher et al. (US 6,959,078), hereinafter Eilbacher.

**Response to Rejection of Claims 49-53, and 60 under 35 U.S.C. § 102(e)**

With respect to the 35 U.S.C. 102 (e) rejections, respectfully, the Office has not made out the required *prima facie* case of anticipation with the Eilbacher reference.

A *prima facie* case of anticipation is established when the Office provides:

1. a single prior art reference
2. teaches or enables
3. each of the claimed elements (arranged as in the claim)
4. expressly or inherently
5. as interpreted by one of ordinary skill in the art.

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"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), Scripps Clinic & Research Found. V. Genentech Inc., 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991), MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In support of the rejection of claims 49-53 the Office states that:

Information as to: "wherein the storable representation *is capable* of being analyzed for quality of service in the second geographic area by an analyst, *the second geographic area is subject to a geographic wage attenuator* and *the analysts has been trained* to provide a calibrated determination of quality of service rendered by the agent *during the service call*" do not recite a structural element, but recite an intended use of the system, and, therefore, is not given patentable weight. MPEP 2106 (II) (C) states: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

Applicant has cancelled claim 60 and amended claims 49 and 52. In response to the rejection of claims 49-53, Applicant's arguments presented directly above respecting the Office's use of MPEP 2106 II (C) to prohibit use of functional language in Applicant's claims and to excise words from Applicant's claim during the patentability determination are applicable here and are proffered in support of the patentability of claims 49-53.

Pertaining to claim 49, the Office has admitted that "Eilbacher et al. does not teach that the analyst has been trained to provide a calibrated determination of

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quality of service.” Office Action, Jan. 6, 2009, p 8-9. This element is found within Applicant’s claim 49, thus Eilbacher cannot anticipate Applicant’s claim 49 since not all of Applicant’s claim limitations are found within Eilbacher. Additionally, Eilbacher does not teach “analyzing” the customer-agent interaction as Applicant does, see discussion above titled “**Eilbacher Does Not Teach “Analyzing”...**” on pages 42-47 above in support of the fact that Eilbacher does not teach Applicant’s claim limitations. Thus, in light of Applicant’s arguments and the Office’s admission (Office Action, Jan. 6, 2009, p8-9 quoted above) Applicant requests removal of the 35 U.S.C. 102(e) rejection to claims 49-53 and the issuance of timely notice of allowance.

**Applicant’s New Claims 78-88.**

For the foregoing reasons provided above, Eilbacher, Garrido, and Jotkowitz either singly or in combination do not teach the claim limitations found in Applicant’s New claims 78-88, such as but not limited to accelerated training of analyst..., calibrating analysts..., producing a calibrated determination of the quality of service rendered to a customer..., monitoring in real time..., analyzing in nearly real time..., etc. Neither do these references teach: calibration of a group of analysts as discussed above, using higher frequency sampling or multiple types of calibrations to accelerate training of the analysts (New claim 77); that the higher frequency is approximately six times a day or at a rate that is statistically relevant for a particular business. Thus, the cited references do not disclose Applicant’s claim limitations. New claims 78-88 are in condition for allowance and Applicant requests the timely issuance of same.

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**CONCLUSION**

Claims 9, 10, 18, 19, 20, 21, 22, 23, 24, 42, 45, 46, 47, 49, 52, 54, 55, 56, 64, 67, 74, 75, 76 and 77 have been amended.

Claims 25-41, 60-63, and 69-73 have been cancelled.

Claim 78-88 are new.

Applicant respectfully submits that all claims are in condition for allowance and requests such.

Communication via cleartext email is authorized.

Respectfully submitted,

PELOQUIN, PLLC

July 6, 2009  
Date

Mark S. Peloquin  
Mark S. Peloquin, Esq.  
USPTO Registration # 50,787

**CERTIFICATE OF FACSIMILE TRANSMISSION**

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Application No. 10/691,777

The following papers were received in the United States Patent and Trademark Office:

Applicant: Howard M. Lee  
Attorney: Mark S. Peloquin, Esq.  
Title of Invention: **BUSINESS PERFORMANCE AND CUSTOMER CARE QUALITY MEASUREMENT**  
Serial No.: 10/691,777  
Filing Date: October 22, 2003  
Docket No.: 062403.P001  
Express Mail No.: EB 583248349 US

- \_\_\_\_\_ (1) Utility Patent Application Transmittal SB21 ( 1pg)
- \_\_\_\_\_ (1) Fee transmittal SB17 (1 pg)
- \_\_\_\_\_ (1) Petition For Extension of Time SB22 (1 pg)
- \_\_\_\_\_ (1) Response to Office Action (56 pgs)
- \_\_\_\_\_ (1) PTO 2038 (1 pg)
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